IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELALTE SIDE

APPEAL FROM ORDER NO.957 OF 2005
WITH
CIVIL APPLICATION NO.625 OF 2005

Municipal Corporation for Greater Mumbai. ...Appellant.
Vs.
Ali Abdulla Mir. ...Respondent.

....

Mrs.Geeta Joglekar for the Appellant.
Mr. P. S. Dani with Mr. S.K. Sthalekar for the Respondent.

.....

CORAM : DR. D.Y. CHANDRACHUD, J.

November 19, 2005.

P.C.:

A notice under Section 351 of the Mumbai Municipal Corporation Act, 1888, dated 25th June 2003 was followed by an order of the Assistant Municipal Commissioner, holding that unauthorised changes had been made by the Appellant. An allegation is that there was a change in the elevation by a horizontal shifting of the position of a window and the wall of the hall towards the external face of the building on the eastern side admeasuring 5'4'' x 6'4” and as a result, there is an increase in the FSI. In the affidavit filed before the City Civil Court it has been stated that the changes were unauthorisedly made in contravention of the approved sanctioned building plan bearing

No.EB/3204/E/N/A.

The Learned Trial Judge has noted in para 3 of the impugned order that it appears from the photographs that part of the open space between two windows has been allegedly covered by the Plaintiff which is not according to the approved plan. Having said that the Learned Trial Judge nonetheless observed that this aspect would have to be "gone through in full fledged hearing of the suit" and the Motion was made absolute. Having prima facie observed that there was a violation of the approved plan, in my view, it was not appropriate thereafter for the Trial Court to grant interlocutory relief on the Motion. However, there is no specific evaluation of the factual position even for the purposes of granting relief in the Notice of Motion. In these circumstances, I am of the view that it would be appropriate to quash and set aside the impugned order dated 5th August 2004 and restore the Notice of Motion to the file of the Learned Trial Judge. This is done in order to facilitate a fresh consideration of the question as to whether interlocutory relief is warranted. Accordingly, the impugned order dated 5th August 2004 is quashed and set aside. Notice of Motion No.3433 of 2001 shall stand

restored to the file of the Learned Trial Judge for disposal afresh. The appeal is accordingly disposed of. It is needless to add that it

would be open to the Respondent to urge all contentions before the Learned Trial Judge in regard to the nature of the alteration which has been carried out. Similarly, it would be open to the Municipal Corporation to make submissions in regard to all aspects. The Learned Trial Judge shall be at liberty to dispose of the Motion independently after considering the submissions of the parties.

In view of the disposal of the appeal, the Civil Application does not survive and is accordingly disposed of.

.....